

for positioning within a body cavity, are for completely different purposes and achieve completely different objectives that are not related to each other or the present invention. Additionally, neither patent discloses a method for immobilizing an animal. For these and the reasons discussed below, the combination suggested in the Office Action would not have been obvious to one of ordinary skill in the art.

The patent to Seager discloses a device and method for obtaining semen by stimulating the ejaculatory nerves of a male who has experienced a spinal cord injury. The patent to Seager suggests that this stimulation of the ejaculatory nerves and collection of a semen sample can act to reduce the spasticity of the injured individual. The device used to stimulate the injured person includes a probe having electrodes spaced along its exterior surface. The patent discloses that the stimulating device provides a voltage of 0 to 35 volts, a current of 0 to 700 milliamps and a frequency of 60 Hz.

Contrary to the position taken in the Office Action, the patent to Seager does not disclose a method for, or relate to, the immobilization of animals. Instead, the patent is strictly related to the stimulation of the ejaculatory nerves of individuals with limited or no movement of their appendages. Additionally, as mentioned in the Office Action, the patent does not disclose that the stimulation provided to the injured patient has the recited frequency of between 20 and 50 Hz.

The patent to Carman discloses a device and method for determining a person's muscle strength and varying his/her muscle strength in order to alleviate urinary or fecal urgency and incontinence. The method is performed to measure the muscle strength of the patient when tensing the appropriate muscles in a urinary or fecal stopping manner in order to obtain a base

line EMG or pressure signal. The device is then used to assist the patient in achieving the base line or greater EMG or pressure signal when experiencing an urge or incontinence. The device of Carman is also used to test the effectiveness of exercises performed by the patient in an attempt to increase their strength and control against fecal or urinary incontinence or urges.

The patent to Carman does not disclose a method of immobilizing an animal or a probe with the recited electrical power source for immobilizing an animal. Additionally, the patent to Carman does not disclose an electrical power source having the voltage or current values recited in the pending claims. Instead, the patent to Carman only mentions that a frequency within the recited range can be used to test the muscle strength of a person when trying to prevent a bodily function from occurring. Hence, the patent is relied upon for its teaching of such a frequency.

The patent to Carman does not provide any expectation of success for the suggested combination. Specifically, the patent to Carman does not disclose or suggest that the device and method of Seager will effectively stimulate the ejaculatory nerves of a patient and cause a semen sample to be expelled if the frequency is reduced to the levels recited in the pending claims. Absent some expectation of success, the modification would not have been obvious. Additionally, such a modification would destroy the device and method taught in the patent to Seager. Withdrawal of the rejection is requested.

The modification suggested in the Office Action would not have been obvious to one of ordinary skill in the art because it is based solely on impermissible hindsight. It is well settled that the Patent Office cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to arrive at the claimed invention. *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). However, this is what has happened in the present application. The teachings in the

patent to Carman relating to the method and objectives of strengthening the muscles that are intended to be achieved by the use of the probe have been ignored. Similarly, the provided current values used with the probe to achieve these objectives have also been ignored. It is merely the frequency value that has been picked from the disclosure of Carman without any consideration for the other aspects of the patent disclosure and how they achieve objectives that are completely contradictory to those of both the patent to Seager and the present invention. The patent to Carman does not provide any suggestion for modifying a method for causing ejaculation with the frequency values used in a method for strengthening muscles in order to arrive at a device and method for immobilizing animals. Hence, the combination set forth in the Office Action is based on impermissible hindsight.

Additionally, one of ordinary skill in the art would not have looked at the disclosure of Carman to modify the disclosure of Seager in order to arrive at the device and method for immobilizing an animal as recited in the pending claims. The patent to Carman relates to detecting the strength of a body when preventing a body function from occurring and strengthening the muscles so that the body function is prevented. Conversely, the patent to Seager discloses a device and method for stimulating a body so that a bodily function occurs. The considerations associated with these two divergent methods are not the same because one method relates to the prevention of a bodily function so that a bodily fluid is retained within the body and the other relates to the stimulation of a bodily function so that a bodily fluid is expelled from the body. Accordingly, one of ordinary skill in the art would not have looked to the patent to Carman that discloses a device and method for preventing a bodily function to occur in order to modify a device and method for stimulating a bodily function in order to arrive at the recited

patent to Carman relating to the method and objectives of strengthening the muscles that are intended to be achieved by the use of the probe have been ignored. Similarly, the provided current values used with the probe to achieve these objectives have also been ignored. It is merely the frequency value that has been picked from the disclosure of Carman without any consideration for the other aspects of the patent disclosure and how they achieve objectives that are completely contradictory to those of both the patent to Seager and the present invention. The patent to Carman does not provide any suggestion for modifying a method for causing ejaculation with the frequency values used in a method for strengthening muscles in order to arrive at a device and method for immobilizing animals. Hence, the combination set forth in the Office Action is based on impermissible hindsight.

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recited device and method for immobilizing an animal. Accordingly, withdrawal of the rejection is requested.

Claims 30 and 32 have been rejected under 35 U.S.C. §103(a) as being unpatentable over the combination of Seager in view of Carman and further in view of U.S. Patent No. 3,933,147 to Du Vall et al. that discloses a therapeutic probe intended to be introduced into the vagina of a female human patient for exercising, and thereby strengthening, her pubococcygeous muscle that has been damaged from childbirth or over use. As a result, the probe of Du Vall and its pulse generator were designed to provide a specific type of electrical stimulation to the vaginal area of the body in order to stimulate the muscles and cause them to contract.

The patent to Du Vall is relied upon to disclose the use of a probe having electrodes separated by a groove and for the materials used to form the electrodes. The disclosure of the patent to Du Vall does not overcome the deficiencies of the patents to Seager and Carman. Accordingly, the combination suggested in the Office Action would not have been obvious to one of ordinary skill in the art. Withdrawal of the rejection is requested.

Claim 36 has been rejected under 35 U.S.C. §103(a) as being unpatentable over the combination of Seager, Carman and Du Vall in view of FR 2532150 to Lines that discloses a method of immobilizing a sheep by applying electrodes along the backbone of the sheep. These electrodes are intended to be connected to the skin that includes the mouth, the rectum and the vulva. However, like the patents to Seager, Carman and Du Vall, the publication of Lines does not disclose placing a probe within an anal cavity of an animal and applying the recited current at the recited frequency. Accordingly, the asserted combination would not have been obvious to

Appln. No.: 09/671,607

Amendment dated September 13, 2004

Reply to Office Action of March 11, 2004

the ordinary artisan because the resulting combination would not arrive at the claimed method.

For all of the above-discussed reasons, the withdrawal of the rejection is requested.

For all of the above-discussed reasons, Applicant submits that claims 24-36 are allowable. Notice to this effect is respectfully requested. If the Examiner has any questions that can be facilitated by contacting Applicant's representative, the Examiner is requested to contact the undersigned at the below listed number.

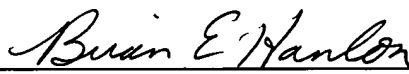
The Commissioner is authorized to charge the three-month extension of time and any additional fees related to this matter to Deposit Account No. 19-0733.

Respectfully submitted,

BANNER & WITCOFF, LTD.

Dated: September 13, 2004

By:



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